

EXHIBIT #5

(Redacted Exhibit)

Singer Declaration

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF VIRGINIA
4 ALEXANDRIA DIVISION

5 CAPITAL ONE FINANCIAL CORPORATION,
6

7 Plaintiff, -

8 vs. -

9 JOHN A. KANAS and JOHN BOHLSSEN,
10

11 Defendants.
12 - - -

13 *** HIGHLY CONFIDENTIAL ***

14 Wednesday, February 22, 2012
15 - - -

16 Videotaped Deposition of
17 JAMES COVINGTON, taken pursuant to Notice,
18 was held at the law offices of Gibson Dunn &
19 Crutcher, LLP, 200 Park Avenue, New York,
20 New York 10166, commencing at 9:51 a.m., on
21 the above date, before Toni Allegrucci, a
22 Notary Public of the State of New York.
23 - - -

24 MAGNA LEGAL SERVICES

25 Seven Penn Center
1635 Market Street 8th Floor
Philadelphia, Pennsylvania 19103
(866) 624-6221

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MR. SIRES: Okay. Let me look through my outline, but I may be done, so if we can just take a minute.

MR. SCHWARTZ: Sure.

MR. SIRES: And we can all sit here if you like because I don't think it's worth getting up.

MS. PFENNING: Also, off the record.

(Off-the-record discussion held.)

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HIGHLY CONFIDENTIAL - J. Covington protective order, subject to our agreement to promptly designate those portions that do not merit such treatment.

MR. SIRES: Thank you.

MR. SCHWARTZ: Thank you.

THE VIDEOGRAPHER: The time is 4:21. This ends tape No. 4.
-o0o-

(Whereupon, the deposition of JAMES COVINGTON was concluded at 4:21 p.m.)

JAMES COVINGTON

Subscribed and sworn to before me this ____ day of _____, 2012.

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MR. SIRES: Mr. Covington, thank you very much for your patience and agreeing to answer these questions.

THE WITNESS: Yes, sir.

MR. SIRES: We're done.

MR. SCHWARTZ: I have no questions.

Thank you, Mr. Covington.

MR. SIRES: And you folks have been not waiving.

MR. SCHWARTZ: We'll read and sign, yep. Yeah, we'll read and sign. And just, for the record, the agreement we reached off the record was that Mr. Sires will treat the transcript as highly confidential pursuant to the

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, Toni Allegrucci, a Notary Public within and for the State of New York, do hereby certify:

That JAMES COVINGTON, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of February, 2012.

TONI ALLEG RUCCI

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 THE VIDEOGRAPHER: The time is
 3 11:04 a.m. and we're back on the record.
 4 Q. Now, Mr. Covington, let me go back
 5 and talk about another hypothetical, slight
 6 variation on the one right before we took a
 7 break. You have under this hypothetical a
 8 person who lives in New York, calls down to a
 9 branch of this Florida based bank which is
 10 located, the branch is in Florida, and says I
 11 want to open an account at your branch, and
 12 an account is opened at that branch and he
 13 sends money and deposits it, whether
 14 electronically or by mail, in that account.
 15 Would you characterize that as that bank
 16 engaging in banking activity in New York?
 17 A. Where the client lives in New York?
 18 Q. And decides he wants to open an
 19 account at a BankUnited -- let me rephrase
 20 that. I'm not doing good keeping the name
 21 off of it.
 22 A. I understand the point you are
 23 making. I would characterize it as doing
 24 banking in New York, yes, because they are
 25 doing, they are doing business with someone

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 that lives in the State of New York.
 3 Q. Okay. So your view, then, if I can
 4 sort of sum it up, is in determining whether
 5 banking activity under these hypotheticals
 6 takes place in New York State would be if
 7 either -- well, strike that.
 8 Let me sort of see if I can boil
 9 down your reasoning for concluding that in
 10 these hypotheticals there was banking
 11 activity located outside of Florida by this
 12 Florida based bank.
 13 In your view, if the Florida based
 14 bank even through a Florida branch acquires a
 15 mortgage on property located --
 16 THE VIDEOGRAPHER: I'm sorry, I'm
 17 sorry. I'm getting interference. If
 18 there's a BlackBerry on the table.
 19 (Off-the-record discussion held.)
 20 Q. Let me start again.
 21 A. Okay.
 22 Q. I'm trying to get sort of into a
 23 one statement, what I believe to be your
 24 reasoning for characterizing a transaction as
 25 occurring outside of Florida, and so I'm

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 going to now state what I believe your
 3 reasoning is based on your answers, and I'm
 4 going to ask you whether I am right or not in
 5 the way I've stated it, okay. So I'm not
 6 trying to put words in your mouth, I'm asking
 7 whether I've understood it correctly.
 8 With that preface out of the way,
 9 would it be fair to say, Mr. Covington, that
 10 in your view, if a Florida based bank is part
 11 of a mortgage loan transaction carried out
 12 from one of its branches in Florida, acquires
 13 a mortgage on a property located in a state
 14 outside of Florida, that the bank in doing so
 15 has engaged in banking activity in that state
 16 where the property is located?
 17 MR. SCHWARTZ: Objection, asked and
 18 answered.
 19 A. Yes.
 20 Q. Okay. And is it, I
 21 understand -- strike that.
 22 Is it fair to characterize your
 23 view that, if a bank in Florida through a
 24 branch in Florida opens a depository account
 25 for a resident of a state other than Florida,

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 it has engaged in banking activity in the
 3 state where that account holder resides?
 4 A. Yes.
 5 MR. SCHWARTZ: Same objection.
 6 Q. And would it be fair to say that
 7 those two propositions are your underpinning
 8 for what -- your conclusion as to what
 9 constitutes banking outside of Florida?
 10 MR. SCHWARTZ: Objection. You've
 11 asked him two hypotheticals, not a
 12 generic question.
 13 A. Those would be two examples, but I
 14 don't know that they would characterize what
 15 I consider banking outside of Florida.
 16 Q. Other than two, those two examples
 17 which I can sum up as either acquiring a
 18 mortgage on Florida -- strike that -- which I
 19 can sum up as either acquiring a mortgage on
 20 property outside of Florida or opening an
 21 account for someone who lives outside of
 22 Florida, what other things that a bank in
 23 Florida does would you characterize as
 24 banking outside of Florida?
 25 MR. SCHWARTZ: Let me just object

<p style="text-align: right;">Page 58</p> <p>1 HIGHLY CONFIDENTIAL - J. Covington</p> <p>2 to the preface. I think you've</p> <p>3 misstated your question about the person</p> <p>4 outside of Florida. They transferred</p> <p>5 funds from outside the state I think in</p> <p>6 your original hypothetical.</p> <p>7 MR. SIRES: Okay. Jason, I'm just</p> <p>8 going to ask you to object and not make</p> <p>9 speaking objections, object to form.</p> <p>10 Q. Okay, Mr. Covington.</p> <p>11 MR. SIRES: Can you read the</p> <p>12 question back to him again, please.</p> <p>13 (Record read.)</p> <p>14 MR. SCHWARTZ: Same objections.</p> <p>15 A. I would consider developing a</p> <p>16 strategy to acquire banking relationships in</p> <p>17 a particular market to be a banking activity.</p> <p>18 I would say developing a brand recognition</p> <p>19 outside of Florida in a particular market</p> <p>20 with the intent of acquiring banking</p> <p>21 relationships to be part of banking. I would</p> <p>22 say identifying and building a distribution</p> <p>23 system would be characteristic of a banking</p> <p>24 activity.</p> <p>25 And I would say hiring, recruiting</p>	<p style="text-align: right;">Page 60</p> <p>1 HIGHLY CONFIDENTIAL - J. Covington</p> <p>2 Q. Let me ask you something. If, if a</p> <p>3 person sits in his study in his home in</p> <p>4 New York State, and sits back on his</p> <p>5 EasyChair or her EasyChair, closes his or her</p> <p>6 eyes and starts thinking about where he or</p> <p>7 she might want to open branches in Manhattan,</p> <p>8 would you call that exercise engaging in</p> <p>9 banking activity?</p> <p>10 MR. SCHWARTZ: And again, you are</p> <p>11 asking for his personal opinion.</p> <p>12 A. I don't know what the, I don't know</p> <p>13 what the legal definition of it would be. I</p> <p>14 can tell you that I do that and it clearly is</p> <p>15 part of my banking activity. I mean, I don't</p> <p>16 necessarily close my eyes, but I do exactly,</p> <p>17 I do very similar to what you are talking</p> <p>18 about and I would consider it, I mean, it is</p> <p>19 part of my, it's what I consider part of my</p> <p>20 responsibilities to think through different</p> <p>21 scenarios like you are presenting me with.</p> <p>22 Q. So if I sat in Mr. Schwartz's</p> <p>23 waiting room this morning thinking about</p> <p>24 possibly trying to open some bank branches in</p> <p>25 Manhattan, you would say that this morning in</p>
<p style="text-align: right;">Page 59</p> <p>1 HIGHLY CONFIDENTIAL - J. Covington</p> <p>2 people to work in a market outside of Florida</p> <p>3 or to do business with people in that market</p> <p>4 would be a banking activity.</p> <p>5 Q. Let me ask you about the first one</p> <p>6 you said was developing a strategy.</p> <p>7 A. Yes, sir.</p> <p>8 Q. What does developing a strategy</p> <p>9 mean?</p> <p>10 A. I would say a strategy would</p> <p>11 include the components of place which is</p> <p>12 where you would do your business, how you</p> <p>13 would distribute your product, people who</p> <p>14 would deal with clients, who would manage</p> <p>15 clients, who would develop marketing</p> <p>16 approaches to developing brand and acquiring</p> <p>17 clients, positioning which would be both</p> <p>18 strategy and the brand development, pricing,</p> <p>19 how do you price to acquire business, and</p> <p>20 products, what products do you offer to</p> <p>21 acquire business.</p> <p>22 And I'm sure there are other things</p> <p>23 like regulatory and legal stuff that have to</p> <p>24 be included in a strategy, and I have to</p> <p>25 admit I don't understand all that.</p>	<p style="text-align: right;">Page 61</p> <p>1 HIGHLY CONFIDENTIAL - J. Covington</p> <p>2 Mr. Schwartz's waiting room I was engaged in</p> <p>3 banking activity in New York?</p> <p>4 A. I would say you were, you were</p> <p>5 involved in an activity related to banking in</p> <p>6 New York.</p> <p>7 Q. No. But my question is, and my</p> <p>8 questions before that have been, whether you</p> <p>9 characterize that exercise as engaging in</p> <p>10 banking activity?</p> <p>11 A. I'd probably say that's a stretch.</p> <p>12 Q. Why?</p> <p>13 A. Because I really don't know what</p> <p>14 you are thinking about. I mean, just, I</p> <p>15 don't know.</p> <p>16 Q. I'm telling you what I'm thinking</p> <p>17 about.</p> <p>18 A. About branching?</p> <p>19 Q. Yeah. I'm thinking about what --</p> <p>20 A. If you are developing a strategy to</p> <p>21 acquire clients then, banking clients in the</p> <p>22 marketing place, then that is a banking</p> <p>23 activity.</p> <p>24 Q. So to answer my question, if I as I</p> <p>25 waited for your deposition to start sat in</p>

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 Mr. Schwartz's waiting room here in New York
 3 City and started thinking about where I might
 4 want to one day open branches for a bank in
 5 New York City, you would say that I was
 6 involved in banking activity in New York when
 7 I was doing that, correct?

8 A. Yeah. It would be a banking
 9 activity, sure. Developing a distribution
 10 system is a banking activity.

11 Q. And even just thinking about it, as
 12 I in my hypothetical?

13 A. You've got to think about it before
 14 you -- hopefully you will think about it
 15 before you do it.

16 Q. So the answer to my question is
 17 "yes" --

18 A. Yes.

19 Q. -- that would be my engaging in
 20 banking activity in the lobby of Gibson Dunn
 21 & Crutcher?

22 A. Yes.

23 Q. I'm trying to find one document
 24 here, if you'll bear with me for a second.

25 MR. SCHWARTZ: Sure.

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 (Off-the-record discussion held.)

3 Q. Okay. Now, Mr. Covington, have you
 4 ever had occasion to, to participate on
 5 behalf of any of the banks for which you have
 6 worked in the secondary mortgage loan market?

7 A. No, sir.

8 Q. Do you know what the secondary
 9 mortgage loan market is?

10 A. Generally.

11 Q. What is your general understanding
 12 of that?

13 A. It is the act of buying mortgages
 14 originated by one financial institution to
 15 put in your portfolio.

16 Q. Do you know whether typically in
 17 the context of these transactions on the
 18 secondary mortgage loan market there is any
 19 contact as part of the acquisition with the
 20 customer who originally took out the loan or
 21 signed the mortgage?

22 A. That's a pretty broad question.

23 Q. If you know. If you don't know
 24 then just let me know. Let me, let me
 25 withdraw the question and rephrase it.

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1 HIGHLY CONFIDENTIAL - J. Covington

2 Do you know how these transactions
 3 actually are carried out?

4 A. I have a general idea.

5 Q. And what is the general idea?

6 A. That they are packaged together and
 7 sold as a package to another financial
 8 institution, an investment organization, a
 9 variety of different. But to a bank it would
 10 be a package sold as a package.

11 Q. And do you know if that is a market
 12 that sort of cuts across state lines?

13 A. I honestly don't know how you, if
 14 you want to purchase, I don't know how
 15 you -- what the restrictions are. I'm
 16 assuming you could buy packages from
 17 particular locations, but I don't, I don't
 18 know that for a fact.

19 Q. Okay. Now, you've spent, as I take
 20 it, your professional career as an employee
 21 of a bank in either Florida or New York?

22 A. Or Alabama.

23 Q. Or Alabama, I'm sorry. So putting
 24 Alabama aside for the second, for a second,
 25 you've spent certainly the bulk of your

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1 HIGHLY CONFIDENTIAL - J. Covington
 2 career in as an employee of a bank in
 3 New York and in Florida; is that right?

4 A. Yes, sir.

5 Q. Now, as a banker, is there any
 6 connection between those two banking markets?

7 A. Yes, sir.

8 Q. And what is that connection?

9 A. From my experience the primary
 10 connection has been snow birds, retirees or
 11 semi-retired people going from New York to
 12 Florida for the winter, for the weather.

13 Q. Given that understanding of the
 14 connection between the two states, would you
 15 expect that banks in Florida typically have
 16 at least some mortgage loans where the
 17 property is located in New York?

18 MR. SCHWARTZ: Objection, calls for
 19 speculation. You can answer if you
 20 know.

21 A. When, when I was in Florida in
 22 banking I don't believe it would have been
 23 common. Today I believe it would be quite
 24 common.

25 Q. And, of course, you were in the